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### Remarks

Reconsideration of the above-captioned application is respectfully requested. The indicated allowability of dependent Claims 20, 24, and 28 is gratefully acknowledged. The limitation of Claim 20 now appears in independent Claim 17, and the limitation of Claim 28 now appears in independent Claim 25. Also, independent Claim 29 has been canceled. Accordingly, Claims 17 and 25 and their respective dependent claims will not be further addressed.

Applicant notes that in several claims, the conjunctive "and" has been changed to "or" to comply with Superguide Corp. v. DirectTV Enterprises, Inc., 358 F.3d 870 (Fed. Cir. 2004) in which a claim recitation of "at least one of A, B, C, and D" was held to minimally require at least one element from each of the categories A, B, C, and D, not one or more elements from one or more categories as intended in the present case, with the Federal Circuit noting that for the latter interpretation to hold, the conjunctive "or" should be used.

Independent Claims 1, 9, and 21 remain at issue. To summarize the rejections, independent Claims 17, 21, and 25 had been rejected under 35 U.S.C. §102 as being anticipated by Belsan et al., USPN 5,632,012, and Claims 1, 3-9, 11-16, 18, 22, and 26 (of which Claims 1 and 9 are independent) have been rejected under 35 U.S.C. §103 as being unpatentable over Belsan et al. in view of Pfeffer et al., USPN 5,210,860. Dependent Claims 2, 10, 19, 23, 27, and 29 have been rejected under 35 U.S.C. §103 as being unpatentable over Belsan et al. in view of Pfeffer et al. ad Lester et al., USPN 6,715,116.

To overcome the rejection of independent Claim 21, Claim 21 now more precisely recites the opportunistic scrub feature set forth on page 9, first paragraph of the specification. More particularly, Claim 21 now recites receiving a user data request, expanding the request to include one or more adjacent data scrub

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units, and scrubbing the data scrub unit while servicing the request. This opportunistic scrub protocol does not appear to be taught or suggested in the relied-upon references.

Turning to Claim 1, which has been amended to incorporate the limitations of Claims 3 and 4, of relevance is the rejection of Claim 4, citing col. 11, lines 57-62 of Pfeffer et al. as a teaching of an adaptive delay after which scrubbing can resume. However, as indeed noted by the examiner, this portion of Pfeffer et al. merely allows a user to directly change the timer period; it states nothing about waiting a delay period that depends on the frequency and/or number of user requests received from the RAID controller as set forth in Claim 1. Instead, in Pfeffer et al. the user resets the timer period without any evident contemplation of keying the timer to the frequency or number of user requests. Accordingly, it is believed that Claim 1 and its respective dependent claims are patentable.

Considering independent Claim 9, it is believed that Claim 9 originally contained subject matter held to be allowable in the cases of Claims 20, 24, and 28. Indeed, the allegation appears to be incorrect that Pfeffer et al., col 4, lines 46-51 teaches interrupting the scrub cycle if the scrub rate exceeds a threshold and otherwise not interrupting the scrub. Instead, the relied-upon section of Pfeffer et al. always interrupts the scrub rate to service a user request ("the background task *will be inactive* when the disk array subsystem is actively performing read or write operations", without ever stating a time when scrubbing continues in the face of a read or write request.) Accordingly, it is believed that Claim 9 is patentable.

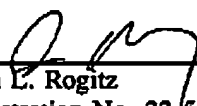
The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

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Respectfully submitted,



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